

12. PETITION FOR SPECIAL HEARING  
2/S Benson Avenue, 296.3' N.  
of Sulphur Spring Road  
(5227 Benson Avenue)  
13th Election District  
1st Councilmanic District  
Benson Holding Co., Inc.  
Petitioners

BEFORE THE  
DEPUTY ZONING COMMISSIONER  
OF BALTIMORE COUNTY  
Case No. 90-121-SPH

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioners herein request a special hearing to approve the nonconforming use of the subject property as a three-apartment dwelling unit in accordance with Petitioner's Exhibit 1.

The Petitioners, Herbert L. Fisher, President, appeared, testified, and was represented by Robert B. Greenwalt, Esquire. Appearing as Protestants in the matter were Michael S. Fischer and Robert O. Funk, adjoining property owners.

Testimony indicated that the subject property, known as 5227 Benson Avenue, consists of .14 acres zoned D.R. 5.5 and is improved with a two story frame dwelling and separate garage. Mr. Fisher testified the Petitioners purchased the subject property in late 1959, early 1960 at which time the property was used as three apartments. He indicated that since their purchase of the property, the building has been used continuously and without interruption as three apartments. Mr. Fisher testified that pending a determination of this hearing, he intends to rent only the first and second floor apartments, leaving the basement apartment vacant. To support his testimony, Petitioner's introduced the affidavit of K. Doris Grimm verifying that she is familiar with the subject property being occupied as a two-apartment dwelling since June 1941. Mr. Fisher testified that Ms. Grimm used to reside in 5229 Benson Avenue and that her

family previously owned 5227 Benson Avenue.

Mr. Funk testified that he has resided at 5223 Benson Avenue for the past 12 years. He testified that to the best of his knowledge, the property has been used continuously as apartments, however, he does not know the number. Mr. Fischer, who owns 5225 Benson Avenue, testified that while he has only owned his property for the past few years, he has been familiar with the area for the past 31 years as his grandmother formerly owned 5225 Benson Avenue. Both Mr. Funk and Mr. Fischer testified they do not dispute the subject property has been used continuously and without interruption as a two-apartment dwelling. Testimony indicated they have had problems in the past with the condition of the property, tenants chosen by Petitioners, and parking problems as a result of its use as apartments. Mr. Funk indicated that the condition of the property has improved recently, and expressed his hope that the efforts made by Petitioners will continue after the conclusion of the hearing.

The nature of a nonconforming use and permitted issues which may be addressed at this hearing was explained to all parties at the hearing. Zoning came officially to Baltimore County on January 2, 1945, when, pursuant to previous authorization by the General Assembly, the County Commissioners adopted a comprehensive set of zoning regulations.

The Commissioners were first authorized to adopt comprehensive planning and zoning regulations in 1939 (Laws of Maryland, 1939, ch. 715). At the next biennial session of the General Assembly, this authorization was repealed, and a new authorization was enacted (Laws of Md., 1941, ch. 247). Before any such regulations were issued, the Legislature authorized the Commissioners to make special exceptions to the regulations (Laws of Md., 1943, ch. 877). The first regulations were adopted and took

effect on January 2, 1945. See Kahl v. Comm. on Elec. Light and Power, 151 Md. 249, 254, 60 A.2d 754 (1948); Calloway v. County Board of Appeals, 262 Md. 265, 277 A.2d 589 (1971).

Section 11 of those regulations created seven zones, four being residential, one commercial, and two industrial. See McKenny v. Baltimore County, 39 Md. App. 257, 385 A.2d 96 (1978).

Those original regulations provided for nonconforming uses. The statute read as follows:

"A lawful nonconforming use existing on the effective date of the adoption of these regulations may continue, provided, however, upon any change from such nonconforming use to a conforming use, or any attempt to change from such nonconforming use to a different nonconforming use or any discontinuance of such nonconforming use for a period of one year, or in case a nonconforming structure shall be damaged by fire or otherwise to the extent of seventy-five (75%) percent of its value, the right to continue to resume such nonconforming use shall terminate, provided, however, that any such lawful nonconforming use may be extended or enlarged to an extent not more than once again the area of the land used in the original nonconforming use." Section XI, 1945, B.C.Z.R.

Baltimore County adopted a new set of comprehensive zoning regulations on March 30, 1955. The issue of nonconforming uses are dealt with in Section 104 of those regulations. The Section then read:

"104.1 - A lawful nonconforming use existing on the effective date of the adoption of these regulations may continue, provided that upon any change from such nonconforming use to any other use whatsoever, or any abandonment or discontinuance of such nonconforming use for a period of one year or more, or in case any nonconforming business or manufacturing structure shall be damaged by fire or other casualty to the extent of seventy-five (75%) percent of its replacement cost at the time of such loss, the right to continue or resume such nonconforming use shall terminate. No nonconforming building or structure and no nonconforming use of a building, structure, or parcel or land shall hereafter be extended more than 25% of the ground floor area of buildings so used."

Section 104.1 was changed to its current language on March 15, 1976 by Bill No. 16-76. The current effective regulation reads as follows:

"A nonconforming use (as defined in Section 101) may continue except as otherwise specifically provided in these regulations; provided that upon any change from such nonconforming use to any other use whatsoever, or any abandonment or discontinuance of such nonconforming use for a period of one year or more, or in case any nonconforming business or manufacturing structure shall be damaged by fire or other casualty to the extent of seventy-five (75%) percent of its replacement cost at the time of such loss, the right to continue or resume such nonconforming use shall terminate. No nonconforming building or structure and no nonconforming use of a building, structure, or parcel of land shall hereafter be extended more than 25% of the ground floor area of buildings so used. (B.C.Z.R., 1955; Bill No. 18, 1976)"

On August 4, 1980, the current language found in Section 104.2 was added to the B.C.Z.R. by Bill No. 167-80. This regulation placed an exception upon the general nonconforming rule for Special Exception office buildings. The second reads as follows:

"Exception. Any contrary provision of these regulations notwithstanding, an office building that was authorized by grant of a special exception and that becomes damaged to any extent or destroyed by casualty may be fully restored in accordance with the terms of the special exception. (Bill No. 167, 1980)"

As with all non-conforming use cases, the first task is to determine what lawful non-conforming use existed on the subject property prior to January 2, 1945, the effective date of the adoption of the Zoning Regulations and the controlling date for the beginning of zoning.

The second principle to be applied, as specified in Section 104.1, is whether or not there has been a change in the use of the subject property. A determination must be made as to whether or not the change is a different use, and therefore, breaks the continued nature of the nonconforming use. If the change in use is found to be different than the original

nal use, the current use of the property shall not be considered nonconforming. See McKenny v. Baltimore County, Md., 39 Md. App. 257, 385 A.2d 96 (1978). There is no evidence of any change in use in this instance.

After due consideration of the testimony and evidence presented, it appears that the subject property has been used continuously and without interruption as a two apartment dwelling unit since prior to the effective date of the zoning regulations. Inasmuch as the Petitioner was unable to prove the nonconforming use of the subject property as three apartments, the relief requested should be denied.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the relief requested in the Petition for Special Hearing shall be denied.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 10th day of November, 1989 that the Petition for Special Hearing to approve the nonconforming use of the subject property as a three-apartment dwelling unit in accordance with Petitioner's Exhibit 1, be and is hereby DENIED; and

IT IS FURTHER ORDERED that a nonconforming use of the subject property as a two apartment dwelling unit, is hereby GRANTED, subject, however, to the following restriction:

1) The Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appeals process from this order has expired. If, for whatever reason, this order is reversed, the Petitioners would be required to return and be responsible for returning, said property to its original condition.

ANN M. NASTAROWICZ  
Deputy Zoning Commissioner  
for Baltimore County

#### PETITION FOR SPECIAL HEARING

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Baltimore County Zoning Regulations, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of the above Special Hearing advertising, posting, etc., upon filing of this Petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser:

(Type or Print Name)

Signature

Address

City and State

Attorney for Petitioner:

(Type or Print Name)

Signature

Address

City and State

Attorney's Telephone No.

Legal Owner(s):

BENSON HOLDING CO. INC.

(Type or Print Name)

Signature

(Type or Print Name)

Signature

Address

City and State

Name, address and phone number of legal owner, contract purchaser or representative to be contacted

HERBERT L. FISHER

8342 ELM RD.

MILLSVILLE, MD. 21108

647-7547

647-7547

312

day of July, 1989, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 3rd day of Oct. 1989, at 2 o'clock P.M.

J. Robert Hines  
Zoning Commissioner of Baltimore County

#### PETITION FOR SPECIAL HEARING

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for

Should approve the continuous use of 5227 Benson Ave.

as a 3 apartment dwelling.

of the Zoning Regulations of Baltimore County to the Zoning Law of Baltimore County for the following reasons (indicate hardship or practical difficulty)

1. This house was already converted for three apartments before 1945.

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above Variance advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Legal Owner(s):

BENSON HOLDING CO INC

(Type or Print Name)

Signature

8342 ELM RD

Address

647-7547

Phone No.

MILLSVILLE, MD 21108

City & State

#### ZONING DESCRIPTION

Beginning on the east side of Benson Ave. at the distance of 296 feet north of the centerline of Sulphur Spring Rd. being lots 91 & 92 in the subdivision of Arbutus, Book 4, Folio 87 also known as 5227 Benson Ave. in the 13th Election District.

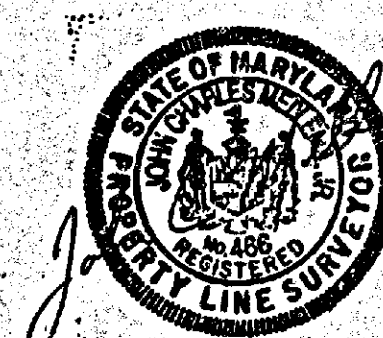
John C. Mellema, Sr. Inc.  
6100 Baltimore National Pike  
Baltimore, Maryland 21228  
June 14, 1989

#### Deed Description for Benson Holding Company Inc. Property

Beginning for the same at a point on the east side of Benson Avenue at a point distant 296 feet 3 inches Northerly from the corner of the intersection of the east side of Benson Avenue with the north side of Sulphur Spring Road, said point of beginning being 5 feet north of the division line between lot 91 and 92 as shown on the Plat of Arbutus, recorded among the land records of Baltimore County in Plat Book W.P.C. No. 4 Folio 87, running thence northerly binding on the East side of Benson Avenue 45 feet to the division line between lot 92 and lot 93 as shown on aforementioned plat; thence easterly at right angles to Benson Avenue and binding on and running with the division line between lot 92 and lot 93, 150 feet to lot 106, thence southerly parallel with Benson Avenue and binding on and running with part of lot no. 105, 45 feet, thence westerly at right angles to Benson Avenue 150 feet to the place of beginning.

Being and comprising the northernmost 45 feet of lot 92 as shown on Plat of Arbutus referred to above. The improvements thereon being known as 5227 Benson Avenue.

Being the same parcel of ground described in a deed dated October 21, 1964 by and between Herbert L. Fischer party of the part and Benson Holding Co. Inc. party of the second part and recorded among the land records of Baltimore County Md. in Liber 4377 folio 326.





**AFFIDAVIT**

The undersigned hereby affirms under the penalties of perjury to the zoning Commissioner of Baltimore County, as follows:

That the information herein given is within the personal knowledge of the Affiant, and Affiant is competent to testify thereto in the event a public hearing is scheduled in the future with regard thereto.

*[Signature]*  
**Affiant (Print Name)**  
**H. Doris Grimm**

Based upon your personal knowledge, please answer the following questions by indicating yes or no in the space provided:

1. Can you verify by this affidavit and/or testify in Court if necessary, that the home located at 5227 Benson Avenue has been occupied as a two apartment dwelling since June 1941 (month) 1941 (year) Yes (answer)

2. Can you also verify and testify, if necessary, that said apartments have been occupied by renters every year since June 1941 (month) 1941 (year) Yes (answer)

3. Will you realize any gain from the sale of this Property? No (answer)

STATE OF MARYLAND, COUNTY OF BALTIMORE to wit:

I HEREBY CERTIFY, this 2nd day of October, 1989, before me, a Notary Public of the State of Maryland, in and for the County aforesaid, personally appeared H. Doris Grimm, the Affiant, personally known or satisfactorily identified to me as such Affiant, and made oath in due form of law that the matters and facts hereinabove set forth are true and correct to the best of his/her knowledge and belief.

AS WITNESS my hand and Notarial Seal.

*[Signature]*  
**Notary Public**  
**My Commission Expires** 7/1/90

**THIS SHEET TO BE SUBMITTED WITH 2 APARTMENT AFFIDAVIT AND A CHECK FOR \$20.00 MADE PAYABLE TO BALTIMORE COUNTY, MARYLAND.**

**FIRST FLOOR** **SECOND FLOOR** **THIRD FLOOR**

**BASEMENT** **ATTIC**

**DIRECTIONS:** DRAW IN EACH ROOM AND MARK ITS USE/LENGTH AND WIDTH. MARK WHICH FLOOR HAS APARTMENT. IF DWELLING IS SEMI DETACHED, USE 1 SHEET FOR EACH APARTMENT.

**LEGEND:** K=KITCHEN, B=BEDROOM, BH=BATH, S=STORAGE, C=CLOSET, LR=LIVING ROOM, DR=DINING ROOM, AND D=DEN.

**SHOW NORTH ARROW IN CIRCLE**

**INCLUDE DWELLING DISTANCE TO PROPERTY LINES, FRONT, SIDES, AND REAR.**

**LOT LENGTH 100'** **LOT WIDTH 45'** **FRONT 296'** **TO SULPHUR SPRING RD**

**NAME OF STREET FRONTING PROPERTY (IF A CORNER LOT NAME SIDE STREET)**

**PLEASE PRINT CLEARLY** **PETITIONER(S) SIGN-IN SHEET**

**NAME** **ADDRESS**

Herbert A. Fisher for Benson Holding Co. 5225 Benson Ave

Robert O. Fisher 5223 Benson Ave

**PROTESTANT(S) SIGN-IN SHEET**

**NAME** **ADDRESS**

Michael A. Fisher 5225 Benson Ave

Robert O. Fisher 5223 Benson Ave

**CERTIFICATE OF POSTING** 90-121-SPH

**ZONING DEPARTMENT OF BALTIMORE COUNTY**  
 Towson, Maryland

**District** 13th **Date of Posting** September 14, 1989

**Posted for:** Special Hearing

**Petitioner:** Benson Holding Co., Inc.

**Location of property:** 5225 Benson Avenue, 226.3' N of Sulphur Spring Road, 5227 Benson Avenue

**Location of Sign:** Entrance of 5227 Benson Avenue

**Remarks:**

**Posted by:** S. J. Arata **Date of return:** September 18, 1989

**Number of Signs:** 7

**CITIZEN INFORMATION** **Dist: Co. 13** **Elec. 13**

**Name:** Bert Fisher **Telephone:** 242-7403

**Address:** 5223 Benson Ave **Form Initiated By:** Michael A.

**PROBLEM:** 219 Benson Ave. 3 apt.

**CITIZEN CONTACT** **Date:** Aug 31 1989

**AGENCY ACTION** **Completed By:**

C-89-323  
9-7-88

**FINAL DISPOSITION** **Date:**

**Division of Citizens Assistance** **DCA Staff Person:**

**Baltimore County**  
**Zoning Commissioner**  
**Office of Planning & Zoning**  
**Towson, Maryland 21204**  
**(301) 887-3353**

**J. Robert Haines**  
**Zoning Commissioner**

**DATE** 9/12/89

**Benson Holding Company, Inc.**  
**8342 Elm Road**  
**Millersville, Maryland 21108**

**ATTN: HERBERT L. FISHER**

**Re:** Petition for Special Hearing  
 CASE NUMBER 90-121-SPH  
 5225 Benson Avenue, 226.3' N of Sulphur Spring Road  
 5227 Benson Avenue  
 13th Election District - 1st Councilmanic  
 Petitioner(s): Benson Holding Co., Inc.  
 HEARING SCHEDULED: TUESDAY, OCTOBER 3, 1989 at 2:00 p.m.

**Please be advised that \$ 7.50 is due for advertising and posting of the above captioned property.**

**THIS FEE MUST BE PAID AND THE ZONING SIGN & POST SET(S) RETURNED ON THE DAY OF THE HEARING OR THE ORDER SHALL NOT ISSUE. DO NOT REMOVE THE SIGN & POST SET(S) FROM THE PROPERTY UNTIL THE DAY OF THE HEARING.**

**Please make your check payable to Baltimore County, Maryland. Bring the check and the sign & post set(s) to the Zoning Office, County Office Building, 111 W. Chesapeake Avenue, Room 15, Towson, Maryland fifteen (15) minutes before your hearing is scheduled to begin.**

**post set(s), there for each such set**

**BALTIMORE COUNTY, MARYLAND** **077311**

**PAID TO BALTIMORE COUNTY** **1201-615-000**

**89-344**

**Benson Holding Company** **90-121-SPH**

**90-121-SPH**

**CERTIFICATE OF PUBLICATION**

Sept 7 1989

THIS IS TO CERTIFY, that the annexed advertisement was published in the CATONSVILLE TIMES, a weekly newspaper published in Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on Sept 7 1989.

**THE JEFFERSONIAN**  
**CATONSVILLE TIMES**

**Publisher**

S. Zehe Ordman

**PO 16318**  
**MS 4174**  
**ca 90-121-SPH**  
**plus \$ 64.31**

**Baltimore County**  
**Zoning Commissioner**  
**Office of Planning & Zoning**  
**Towson, Maryland 21204**  
**(301) 887-3353**

**J. Robert Haines**  
**Zoning Commissioner**

**August 18, 1989**

**NOTICE OF HEARING**

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 108 of the County Office Building, located at 111 W. Chesapeake Avenue in Towson, Maryland as follows:

**Petition for Special Hearing**  
**CASE NUMBER** 90-121-SPH  
**5225 Benson Avenue, 226.3' N of Sulphur Spring Road**  
**5227 Benson Avenue**  
**13th Election District - 1st Councilmanic**  
**Petitioner(s): Benson Holding Co., Inc.**  
**HEARING SCHEDULED: TUESDAY, OCTOBER 3, 1989 at 2:00 p.m.**

**Special Hearing: To approve the continuous use of 5227 Benson Avenue as a 3 apartment dwelling.**

In the event that this Petition is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be in writing and received in this office by the date of the hearing set above or presented at the hearing.

**J. Robert Haines**  
**ZONING COMMISSIONER**  
**BALTIMORE COUNTY, MARYLAND**

**Prepared by:** Benson Holding Company, Inc.

**5225** **5227** **5223**

**SULPHUR SPRING ROAD**

**BENSON AVENUE**

**VICINITY MAP**

**NOTES**

**OWNER: BENSON HOLDING CO. INC.**  
**DISTRICT IS ZONED D.R. 5.5**  
**PLAT OF "ARBUS" PLATBOOK 4 FOLD 87**  
**NORTHERLY 45' OF LOT 22**  
**DEED REFERENCE: LIBER 4377 FOLIO 326**  
**TOTAL SQUARE FEET: 6150' OR 14 ACRES**  
**SCALE: 1"=30'**  
**EXISTING UTILITIES IN BENSON AVENUE**

**"PLAT FOR SPECIAL HEARING"**  
**OF**  
**5227 BENSON AVENUE**  
**BALTIMORE COUNTY MARYLAND**

**PREPARED BY:**  
**JOHN C. MELLEMA SR. INC.**  
**LAND SURVEYORS**  
**6100 BALTIMORE NATIONAL PIKE-BALTO. MD. 21228**  
**(301) 744-8880**



BALTIMORE COUNTY, MARYLAND  
INTER-OFFICE CORRESPONDENCE

TO: J. Robert Haines  
Zoning Commissioner

DATE: September 25, 1989

FROM: Pat Keller, Deputy Director  
Office of Planning and Zoning

SUBJECT: Benson Holding Co., Inc., Item 554  
Zoning Petition No. 90-121-SPH

The Petitioner requests a Special Hearing to approve the use of 5227 Benson Avenue as a 3-apartment dwelling.

In reference to this request, staff offers no comment.

If there should be any further questions or if this office can provide additional information, please contact Jeffrey Long in the Office of Planning at 887-3480.

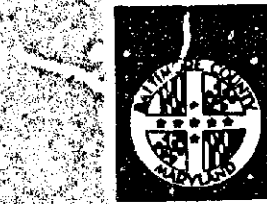
PK/JL/pat

Baltimore County  
Department of Public Works  
Bureau of Traffic Engineering  
Courts Building, Suite 405  
Towson, Maryland 21204  
(301) 887-3554

July 1, 1989

Mr. J. Robert Haines  
Zoning Commissioner  
County Office Building  
Towson, MD 21204

RECEIVED  
AUG 3 1989



Dennis F. Rasmussen  
County Executive

ZONING OFFICE

Dear Mr. Haines:

The Bureau of Traffic Engineering has no comments for items number 525, 526, 527, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 555, 557, 558 and 559.

Very truly yours,

*Michael S. Flanigan*  
Michael S. Flanigan  
Traffic Engineer Associate II

MSF/lab

Baltimore County  
Fire Department  
800 York Road  
Towson, Maryland 21204-2586  
(301) 887-4500

Paul H. Reincke  
Chief

JUNE 26, 1989

J. Robert Haines  
Zoning Commissioner  
Office of Planning and Zoning  
Baltimore County Office Building  
Towson, MD 21204



Dennis F. Rasmussen  
County Executive

RE: Property Owner: BENSON HOLDING COMPANY, INC.  
Location: E SIDE BENSON AVENUE  
Item No.: 554 Zoning Agenda: JUNE 27, 1989

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code", 1988 edition prior to occupancy.

REVIEWER: *Capt. Wm. Brady*  
Planning Group  
Special Inspection Division

Noted and  
Approved

*Capt. Wm. Brady*  
Fire Prevention Bureau

JK/KEK

JUN 27 1989